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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/775,510	02/10/2004	Denise Marie Beachy	J3711(C)	1049
201 7590 11/01/2007 UNILEVER INTELLECTUAL PROPERTY GROUP 700 SYLVAN AVENUE, BLDG C2 SOUTH ENGLEWOOD CLIFFS, NJ 07632-3100			EXAMINER CHUI, MEI PING	
			ART UNIT 1616	PAPER NUMBER
			MAIL DATE 11/01/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

**Application No.**

10/775,510

**Applicant(s)**

BEACHY ET AL.

**Examiner**

Helen Mei-Ping Chui

**Art Unit**

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 October 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-24 is/are pending in the application.
- 4a) Of the above claim(s) 3, 5, 9-11, 13-15, 17 and 21 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1, 2, 4, 6-8, 12, 16, 18-20 and 22-24 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☒ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 07/15/2004 and 01/10/2005.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_.

## **DETAILED ACTION**

### ***Status of Action***

Applicant's election of species with traverse in the reply filed on 10/03/2007 is acknowledged. In the response for the election of species, Applicant elected (a) a particulate aluminium/zirconium chlorohydrate complex with amino acid as antiperspirant active for Group A; (b) carrier fluid of Formula I, wherein  $R^A$  = methyl;  $R^1$ ,  $R^2$  and  $R^3$  are diphenylethyl, and n is 0 to 2 for Group B; (c) a non-polymeric fiber forming gallant is N-acyl amino acid amides for Group C. The traversal is on the ground(s) that there would not be a serious burden to examine all the species together of the present application (see Page 1 of the response). It is not persuasive because aluminium and zirconium metal are different metals and a search for a composition comprising aluminium antiperspirant will be different than a composition comprising zirconium, thus present an undue searching burden to the examiner.

The requirement for election of species is still deemed proper and is therefore made FINAL.

### ***Status of Claims***

Accordingly, claims 1, 2, 4, 6-8, 12, 16, 18-20 and 22-24 are presented for examination on the merits for patentability as they read upon the elected subject matter and claims 3, 5, 9-11, 13-15, 17 and 21 directed to a non-elected species are withdrawn.

***Claim Rejections - 35 USC § 112 second paragraph***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 6 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 6 recites the term “the occurrences of R” according to claim 1. It is unclear which R group, among R<sup>1</sup>, R<sup>2</sup>, R<sup>3</sup>, R<sup>4</sup>, R<sup>5</sup>, R<sup>A</sup>, R<sup>B</sup> or R<sup>C</sup> in formula 1, that applicant is referring to. Therefore, one of ordinary skill in the art would not be reasonably apprised of the scope of the invention and renders the claim indefinite.

***DOUBLE PATENTING***

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the “right to exclude” granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29

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USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

**Claims 1, 16, 18-20 and 22-23** are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-43 and 48-51 of co-pending U.S. Patent Application No. 11/316,596. The instant claims 1, 16, 18-20 and 22-23 are directed to an anhydrous antiperspirant composition comprising a particulate aluminium/zirconium complex, a water-immiscible carrier fluid comprises an aryl substituted siloxane and, optionally, a fibre-forming gallant; where the claims 1-43 and 48-51 of co-pending U.S. Patent Application No. 11/316,596 are directed a an anhydrous antiperspirant composition comprising a particulate aluminium and/or zirconium salt, a water-immiscible carrier fluid comprises a non-volatile silicone oil and/or an aromatic ester oil, and a fibre-forming amide gellant. The instant and conflicting claims only differ by the carrier fluid formula 1, in which the

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independent claim 1 of the instant application recites the carrier fluid is  $R^1R^A_2Si-O-[SiR^2R^A-O]_n-SiR^3R^A_2$  whereas the independent claim 1 of co-pending U. S. Patent Application No. 11/316,596 do not recite the formula 1. However, it is noted that the dependent claim 9 of the co-pending application recites the non-volatile silicone oil of carrier fluid comprises an aryl substituted siloxane with formula as  $R^1R^A_2Si-O-[SiR^2R^A-O]_n-SiR^3R^A_2$  as well.

Therefore, one of ordinary skill in the art, at the time the claimed invention was made, would have readily recognized that claims 1-43 and 48-51 of co-pending U.S. Patent Application No. 11/316,596 and claims 1, 16, 18-20 and 22-23 in the instant application are obvious variant and are not patentability distinct to each other.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

***Notes to Applicant***

It is noted that Applicant elected the aryl substituted siloxane of formula 1 with R<sup>A</sup> is methyl; R<sup>1</sup>, R<sup>2</sup> and R<sup>3</sup> are diphenylethyl, and n is 0 to 2. Since "n" can be 0, 1 or 2, which constitute three different structure of aryl substituted siloxanes; therefore, for examination purpose, the examiner interprets the election of "n" for the aryl substituted siloxane of formula 1 as "0". Also, for the examination purpose, the R group recited in claim 6, which is rejected under 35 USC 112 second paragraph as being indefinite, is interpreted as R<sup>1</sup> in the formula 1.

**Claims 1, 2, 4, 6-8, 12, 18-20, 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGlone et al. (U. S. Patent No. 6,503,492) in view of Powell, V. V. (WO 00/27348).**

***Applicant Claims***

Applicants claim an anhydrous antiperspirant composition comprising a particulate aluminium/zirconium complex, a water-immiscible carrier fluid comprises an aryl substituted siloxane and, optionally, a fibre-forming gallant for the carrier fluid.

***Determination of the scope and content of the prior art (MPEP 2141.01)***

McGlone et al. teach an antiperspirant cosmetic composition comprising an antiperspirant active, i.e. aluminium and/or zirconium complex, and a carrier for the antiperspirant (column 3, line 15-21).

McGlone et al. teach the proportion of antiperspirant active present is from 1 to 35 % by weight of the composition (column 5, line 12-14). McGlone et al. also teach the antiperspirant active can be aluminium/zirconium complexes, i.e. aluminium zirconium chlorohydrate complex with glycine (column 5, line 20, 25 and 29; column 14, line 34; and Table 10, line 33-34 and 58). McGlone et al. further teach that the antiperspirant active can be present in particulate form whereupon it is suspended in a suitable water-immiscible carrier fluid, and which can be structured or thickened (column 5, line 31-34).

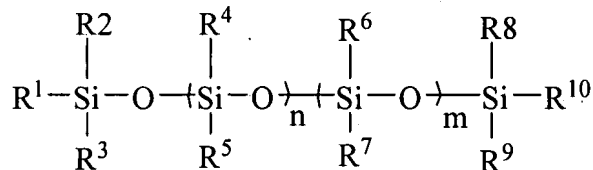
McGlone et al. teach the carrier material for the composition may be a fluid or a mixture of fluids, and can comprise one or more of volatile carrier fluids or non-volatile emollients, in an amount of 5 to 90 % by weight of the composition (column 5, line 62-64, and column 6, line 21-22). McGlone et al. also teach that the non-volatile emollient can be polyorganosiloxanes, i.e. polyalkylarylsiloxanes (column 6, line 54-58), which is an aryl substituted siloxane.

McGlone et al. teach the composition also comprises a fibre-forming gallant as the structurant. McGlone et al. further teach that the suitable gallants include N-acyl amino acid amides, preferably N-lauroyl-L-glutamic acid di-n-butylamide (column 7, line 20-24) in an amount from 0.1 to 25 % by weight (column 7, line 54).



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Powell teaches an aralkylsiloxane as a component used in personal care composition (page 1, line 13-15). Powell also teaches that the aralkylsiloxanes may be employed in the personal care application, i.e. antiperspirants (page 6, line 8-9), has a formula (as below), wherein n and m can be zero, R<sup>1</sup> and R<sup>10</sup> each can be phenylethyl group; R<sup>2</sup>, R<sup>3</sup>, R<sup>8</sup> and R<sup>9</sup> each can be C<sub>1</sub>-C<sub>6</sub> alkyl or, preferably, a methyl group (page 3, line 3 and 6; and page 4, line 16, 19, 21-23).



Powell also teaches that the aralkylsiloxane is present in the composition, based on the molecular weight of the aralkylsiloxane, from about 25 to 65 % by weight (page 5, line 12-13).

***Ascertainment of the difference between the prior art and the claims***

***(MPEP 2141.02)***

Although McGlone et al. teach the polyalkylarylsiloxanes as the aryl substituted siloxane in the carrier fluid, McGlone et al. do not specifically teach the R-substituents of polyalkylarylsiloxane are diphenylethyl and methyl groups.

***Finding of prima facie obviousness Rational and Motivation***

***(MPEP 2142-2143)***

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to combine the teachings of McGlone et al. and Powell, and utilize aralkylsiloxane as an antiperspirant component to obtain the instantly claimed antiperspirant composition.

One of ordinary skill would have been motivated to include an effective amount of aralkylsiloxane in the antiperspirant composition, with a reasonable expectation of success because the addition of aralkylsiloxane would promote shiny, emolliency and lubricity of the antiperspirant composition; and it also aids in visually masking the antiperspirant active in the composition, as suggested by Powell.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art fairly suggests the instant claims.

**Claims 16 and 24 are rejected under 35 U.S.C. 103(a) as being unpatentable over McGlone et al. (U. S. Patent No. 6,503,492) in view of Powell, V. V. (WO 00/27348), and further in view of Chuah et al. (WO 03/005977).**

***Applicant Claims***

Applicants claim an anhydrous antiperspirant composition, which has a hardness of at least  $0.003 \text{ N/mm}^2$ , comprising a particulate aluminium/zirconium complex and a water-immiscible carrier fluid comprises an aryl substituted siloxane, wherein the carrier fluid and antiperspirant active have refractive index matching within 0.005 units.

***Determination of the scope and content of the prior art (MPEP 2141.01)***

The teachings of McGlone et al. and Powell have been set forth above. Essentially, McGlone et al. teach an antiperspirant composition comprising an antiperspirant active and a carrier comprises an aryl substituted siloxane for the antiperspirant; and Powell teaches a structure of the aryl substituted siloxane, which has diphenylethyl and methyl substituents in the structure.

Chuah et al. teach an anhydrous antiperspirant formulation in the form of a soft solid comprising a particulate antiperspirant salt and anhydrous carrier fluid. Chuah et al. also teach that the soft solid formulation has a hardness of from  $3 \times 10^{-3}$  to  $5 \times 10^{-3} \text{ N/mm}^2$  as measured by a sphere indentation technique (page 4, line 22-27).

Chuah et al. also teach that the translucent characteristic of the antiperspirant formulation, described therein, is determined by the difference of the refractive index between the carrier and the suspended antiperspirant salt, described therein, is in the range of 0.03 to 0.08 units (page 27, line 8-12 and line 26-30).

***Ascertainment of the difference between the prior art and the claims***

***(MPEP 2141.02)***

McGlone et al. and Powell do not specifically teach the antiperspirant composition has a hardness of at least 0.003 N/mm<sup>2</sup> measured by sphere indentation and the refractive index difference the carrier fluid and the suspended antiperspirant active is within 0.005 units.

***Finding of prima facie obviousness Rational and Motivation***

***(MPEP 2142-2143)***

It would have been obvious to a person of ordinary skilled in the art at the time the invention was made to combine the teachings of McGlone et al. and Powell, which utilizes aralkylsiloxane as an antiperspirant component, and further to combine the teaching of Chuah et al. to adjust the hardness and transparency to obtain the instantly claimed antiperspirant composition.

One of ordinary skill would have been motivated to adjust the refractive index of the carrier fluid and the antiperspirant active to the range that are different within 0.005 units, with a reasonable expectation of success because the refractive index difference between the carrier fluid and the antiperspirant active is depended on the desired level of transparency for the antiperspirant formulation. One of ordinary skill would also have been motivated to modify the hardness of the antiperspirant composition to at least 0.003 N/mm<sup>2</sup>, with a reasonable

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expectation of success depends on the desired forms, i.e. soft solid, spray, liquid or cream, of the antiperspirant product to be formulated.

Therefore, the claimed invention, as a whole, would have been prima facie obvious to one of ordinary skill in the art at the time the invention was made, because the combined teachings of the prior art fairly suggests the instant claims.

### ***Conclusion***

No claims are allowed.

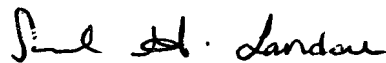
### ***Contact Information***

Any inquiry concerning this communication from the Examiner should direct to Helen Mei-Ping Chui whose telephone number is 571-272-9078. The examiner can normally be reached on Monday-Friday (7:30 am – 5:00 pm). If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Johann Richter can be reached on 571-272-0646. The fax phone number for the organization where the application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either PRIVATE PAIR or PUBLIC PAIR. Status information for unpublished applications is available through PRIVATE PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the PRIVATE PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



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Sharmila Gollamudi Landau

Primary Examiner

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